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INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA – UAW

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VICE-PRESIDENTS: GENERAL HOLIEFIELD • BOB KING • CAL RAPSON • JIMMY SETTLES • TERRY THURMAN

March 4, 2009

TO: Members of the House Labor Committee

FROM: Nadine Nosal, Legislative Coordinator, UAW Michigan CAP

SUBJECT: House Resolution 10 – Support of the Employee Free Choice Act (EFCA)

The International Union, UAW, represents over 400,000 active and retired members across Michigan in both the private and public sectors. UAW is asking you today to support H.R. 10 which urges Congress to pass the Employee Free Choice Act. This Act allows employees, rather than employers, to decide how they would form a union, either by a ballot or by majority sign-up, meaning that if a majority of the employees sign union authorization cards, validated by the National Labor Relations Board (NLRB), a company would have to recognize the union chosen by its employees.

With our economy in shambles, working families are in crisis. They are struggling to make ends meet. Wages are dropping, health costs are rising, and pensions are disappearing. We are in danger of losing our middle class and our economy is suffering as a result. The Employee Free Choice Act will help America's working families improve their standard of living, bring balance and fairness back to the current NLRB election process and restore the promise of the American Dream to working families.

Thirty nine economists, including two Nobel Prize winners, issued a statement supporting the Employee Free Choice Act as key to getting our nation's economy back on its feet. Their statement says in part:

"Indeed, from 2000 to 2007, the income of the median working-age household fell by \$2,000 – an unprecedented decline. In that time, virtually all of the nation's economic growth went to a small number of wealthy Americans. An important

reason for the shift from broadly shared prosperity to growing inequality is the erosion of workers' ability to form unions and bargain collectively." (Full statement attached.)

Unions make people's lives better. The freedom to form unions and bargain for a better life is a basic human right, and it makes a difference. Union members make 30 percent more than workers who don't have unions. They're 59 percent more likely to have health benefits and four times more likely to have pensions. That's real economic security! Enhancing the voice of working people in the workplace is an important step in rebuilding our economy and strengthening our democracy.

It is for these many reasons and the numerous others listed in H.R. 10 that the UAW asks you to support this resolution. Thank you.

Attachment

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Indeed, from 2000 to 2007, the income of the median working-age household fell by \$2,000—an unprecedented decline. In that time, virtually all of the nation's economic growth went to a small number of wealthy Americans. An important reason for the shift from broadly-shared prosperity to growing inequality is the erosion of workers' ability to form unions and bargain collectively.

A natural response of workers unable to improve their economic situation is to form unions to negotiate a fair share of the economy, and that desire is borne out by recent surveys. Millions of American workers—more than half of non-managers—have said they want a union at their work place. Yet only 7.5% of private sector workers are now represented by a union. And in all of 2007, fewer than 80,000 workers won union status through government-sanctioned elections. What explains this disconnect?

The problem is that the election process overseen by the National Labor Relations Board has become drawn out and acrimonious, with management campaigning fiercely to deter unionizing, sometimes to the extent of violating labor laws. Union sympathizers are routinely threatened or even fired, and they have little effective recourse under the law. Even when workers overcome this pressure and vote for a union, they are unable to obtain contracts one-third of the time due to management resistance.

To remedy this situation, the Congress is considering the Employee Free Choice Act. This act would accomplish three things: it would give workers the choice of using majority sign-up—a simple, established procedure in which workers sign cards to indicate their support for a union—or staging an NLRB election; it imposes damages for employers who fire union supporters or break other labor laws; and it creates a process to ensure that newly unionized employees have a fair shot at obtaining a first contract by calling for arbitration after 120 days of unsuccessful bargaining.

The Employee Free Choice Act will better reflect worker desires than the current "war over representation." The Act will also lower the level of acrimony and distrust that often accompanies union elections in our current system.

A rising tide lifts all boats only when labor and management bargain on relatively equal terms. In recent decades, most bargaining power has resided with management. The current recession will further weaken the ability of workers to bargain individually. More than ever, workers will need to act together.

The Employee Free Choice Act is not a panacea, but it would restore some balance to our labor markets. As economists, we believe this is a critically important step in rebuilding our economy and strengthening our democracy by enhancing the voice of working people in the workplace.

#### Statement Endorsers

Henry J. Aaron, Brookings Institution	David Lee, Princeton University
Katharine Abraham, University of Maryland	Frank Levy, Massachusetts Institute of Technology
Philippe Aghion, Massachusetts Institute of Technology	Lisa Lynch, Brandeis University
Eileen Appelbaum, Rutgers University	Ray Marshall, University of Texas
Kenneth Arrow, Stanford University	Lawrence Mishel, Economic Policy Institute
Dean Baker, Center for Economic and Policy Research	Robert Pollin, University of Massachusetts
Jagdish Bhagwati, Columbia University	William Rodgers, Rutgers University
Rebecca Blank, Brookings Institution	Dan Rodrik, Harvard University
Joseph Blasi, Rutgers University	Jeffrey D. Sachs, Columbia University
Alan S. Blinder, Princeton University	Robert M. Solow, Massachusetts Institute of Technology
William A. Darity, Duke University	William Spriggs, Howard University
Brad DeLong, University of California/Berkeley	Peter Temin, Massachusetts Institute of Technology
John DiNardo, University of Michigan	Mark Thoma, University of Oregon
Henry Fairber, Princeton University	Lester C. Thurow, Massachusetts Institute of Technology
Robert H. Frank, Cornell University	Laura Tyson, University of California/Berkeley
Richard Freeman, Harvard University	Paula B. Voos, Rutgers University
James K. Galbraith, University of Texas	David Weil, Boston University
Robert J. Gordon, Northwestern University	Edward Wolff, New York University
Hedi Hartmann, Institute for Women's Policy Research	
Lawrence Katz, Harvard University	
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# Michigan State AFL-CIO

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MARK T. GAFFNEY, *President*

TINA ABBOTT, *Secretary-Treasurer*

Dear Representative,

We are asking for your support for HR 10 – a House resolution to memorialize Congress to support and pass the Employee Free Choice Act (EFCA), and to do so as quickly as possible. It is vitally important to respond to the Senate's passage just last week of a resolution opposing EFCA so that Michigan will not be seen as being somehow anti-labor.

Passage of the Employee Free Choice Act is one of Labor's absolute top priorities for this session of Congress. It is anticipated that the issue will be taken up very soon, and we need to send a message to Congress in support of the legislation – a message which offsets the negative tone engendered by the State Senate. (The Senate resolution passed along strict party lines with every Democrat present voting "NO" and every Republican voting "YES".)

## **What is the Employee Free Choice Act?**

First of all, the playing field has been tilted for some time in favor of the company whenever working men & women have sought to organize. At the first sign of organizing, employees can be intimidated, harassed, disciplined and even fired. The company can immediately begin an anti – organizing campaign which often results in workers giving up because of fear and/or futility. And the company can delay any organizing with a series of stalling tactics.

EFCA would require that once a certain percentage of the work force had signed cards indicating they want a chance to vote on representation. It's really that simple. It allows for a vote on whether or not the employees get the right to proceed with trying unionizing a work-place.

At that point, workers could determine – by their choice – how to proceed! They could opt for an NLRB supervised election, many of which have been shown to be tilted – OR – they could simply move ahead on organizing given the fact that a majority of workers had already indicated a desire to form a union. Contrary to the arguments against the EFCA, workers now have two options – a secret ballot election supervised by the NLRB – OR – moving ahead based on a majority of the workforce indicating that they want to move ahead.

**Basically, EFCA would give workers the right to organize and form a union – free from coercion and intimidation by the company: it's democracy in action.**

The proposed resolution simply underscores the rights of workers to organize – a right that has been cherished by Americans for decades // the right that has brought economic fairness to workers across America – and that has resulted in the prosperous middle class we know today.

I've enclosed additional background information: if you have questions, please feel to contact us.

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### **Why do we need new federal legislation, the Employee Free Choice Act?**

America's working people are struggling to make ends meet, and our middle class is disappearing. The best opportunity working men and women have to get ahead is by uniting with co-workers to bargain with their employers for better wages and benefits.

But the current labor law system is broken. Corporations routinely intimidate, harass, coerce and even fire people who try to organize unions—and today's labor law is powerless to stop them. Every day, employers deny working people the freedom to make their own choice about whether to have a union:

- Employees are fired in one-quarter of private-sector union organizing campaigns;
- 78 percent of private employers require supervisors to deliver anti-union messages to the workers whose jobs and pay they control;
- And even after workers successfully form a union, one-third of the time they are not able to get a contract.

### **What does the Employee Free Choice Act do?**

It does three things to level the playing field for employees and employers:

1. Strengthens penalties for companies that illegally coerce or intimidate employees in an effort to prevent them from forming a union;
2. Brings in a neutral third party to settle a contract when a company and a newly certified union cannot agree on a contract after three months;
3. Establishes majority sign-up, meaning that if a majority of the employees sign union authorization cards, validated by the National Labor Relations Board (NLRB), a company must recognize the union.

### **What's wrong with the current law?**

The National Labor Relations Act states: "Employees shall have to the right to self organization to form, join, or assist labor organizations..." It was designed to protect employee choice on whether to form unions, but it has been turned upside down.

The current system is not like any democratic election held anywhere else in our society. Employers have turned the NLRB election process into management-controlled balloting—the employer has all the power, controls the information workers can receive and routinely poisons the process by intimidating, harassing, coercing and even firing people who try to organize unions. On top of that, the law's penalties are so insignificant that many companies treat them as just another cost of doing business. By the time employees vote in an NLRB election, if they can get to that point, a free and fair choice isn't an option. Even in the voting location, workers do not have a free choice after being browbeaten by supervisors to oppose the union or being told they may lose their jobs and livelihoods if they vote for the union.

### **What is majority sign-up, and how does it work?**

When a majority of employees votes to form a union by signing authorization cards, and those authorization cards are validated by the federal government, the employer will be legally required to recognize and bargain with the workers' union.

Majority sign-up is not a new approach. For years, some responsible employers such as Cingular Wireless have taken a position of allowing employees to choose, by majority decision, whether to have a union. Those companies have found that majority sign-up is an effective way to allow workers the freedom to make their own decision—and it results in less hostility and polarization in the workplace than the failed NLRB process.

**Does the Employee Free Choice Act take away so-called secret ballot elections?**

No. If one-third of workers want to have an NLRB election at their workplace, they can still ask the federal government to hold an election. The Employee Free Choice Act simply gives them another option—majority sign-up.

“Elections” may sound like the most democratic approach, but the NLRB process is nothing like any democratic elections in our society—presidential elections, for example—because one side has all the power. The employer controls the voters’ paychecks and livelihood, has unlimited access to speak against the union in the workplace while restricting pro-union speech and has the freedom to intimidate and coerce the voters.

**Does the Employee Free Choice Act silence employers or require that they remain neutral about the union?**

No. Employers are still free to express their opinion about the union as long as they do not threaten or intimidate workers.

**Will employees be pressured into signing union authorization cards?**

No. In fact, academic studies show that workers who organize under majority sign-up feel less pressure from co-workers to support the union than workers who organize under the NLRB election process. Workers who vote by majority sign-up also report far less pressure or coercion from management to oppose the union than workers who go through NLRB elections

In addition, it is illegal for anyone to coerce employees to sign a union authorization card. Any person who breaks the law will be subject to penalties under the Employee Free Choice Act.

**Isn’t this law really about unions wanting to increase their membership?**

This law is about restoring to working people the freedom to improve their lives through unions.

More than half of people who don’t have a union say they would join one tomorrow if given the chance. After all, people who have unions earn 30 percent more than people without unions and are much more likely to have health care and pensions. With a free choice to join unions, working people can bargain for better wages, health care and pensions to build a better life for their families.

With the economic pressures on working people today, the freedom to pursue their dreams is crucially important.

**Who supports the Employee Free Choice Act?**

The Employee Free Choice Act has the support of hundreds of members of Congress of both parties, academics and historians, civil and human rights organizations such as the NAACP and Human Rights Watch, most major faith denominations and 69 percent of the American public. (For a detailed list of supporters, visit [www.EmployeeFreeChoiceAct.org](http://www.EmployeeFreeChoiceAct.org).)

**Who opposes the Employee Free Choice Act?**

Corporate front groups are waging a major campaign to stop the Employee Free Choice Act. They do not want workers to have the freedom to choose for themselves whether to bargain through unions for better wages, benefits and working conditions. The anti-union network includes discredited groups like the Center for Union Facts, led by lobbyist Richard Berman, who is infamous for fighting against drunk driving laws and consumer and health protections, and the National Right to Work Committee and Foundation, the country’s oldest organization dedicated exclusively to destroying unions.

# Turn Around America's ECONOMY

## REBUILD THE MIDDLE CLASS



No one needs to tell you our economy is in a mess.

Families in our community are having a hard time making ends meet, and that hurts the businesses here as well. Working families need the economic boost that comes from secure jobs, health care and fair pay so that they can pump more into our local economy and help small businesses thrive.



The Employee Free Choice Act will help rebuild a stable middle class to support our local businesses. It will also build good relationships between employers and employees by smoothing the transition to a first contract—so that workers and employers can focus on doing their jobs to help their businesses succeed.

**Please join the broad coalition of businesses, organizations and elected leaders who support the Employee Free Choice Act.** It's easy—just use the attached form.



Your firm's name will be listed among business, academic, religious and organizational supporters of the Employee Free Choice Act on websites, in printed ads and in other media spots.

[www.EmployeeFreeChoiceAct.org](http://www.EmployeeFreeChoiceAct.org)





1. Companies that illegally fire at least one worker for union activity during organizing campaigns:	<b>25%</b>
2. Chance that an active union supporter will be illegally fired for union activity during an organizing campaign:	<b>1 in 5</b>
3. Companies that hire consultants or union-busters to help them fight union organizing drives:	<b>75%</b>
4. Companies that force employees to attend one-on-one meetings against the union with their own supervisors:	<b>78%</b>
5. Companies that force employees to attend mandatory closed-door meetings against the union:	<b>92%</b>
6. Companies that threaten to call U.S. Citizenship and Immigration Services during organizing drives that include undocumented employees:	<b>52%</b>
7. Companies that threaten to close the plant if the union wins the election:	<b>51%</b>
8. Companies that actually close their plants after a successful union election:	<b>1%</b>
9. Workers in FY 2007 who received back pay in cases alleging company violations of workers' rights under the National Labor Relations Act:	<b>29,559</b>
10. Percentage of cases in which companies do not agree to a contract after workers form a union under the NLRB process:	<b>44%</b>
11. Portion of public that supports workers' freedom to bargain for better wages and benefits:	<b>78%</b>
12. Portion of public that knows companies routinely resist unionization efforts by their employees:	<b>47%</b>
13. Number and percentage of U.S. workers that belong to unions:	<b>16.1 million or 12.4%</b>

SOURCES: 1 and 3-8: Kate Bronfenbrenner, "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages and Union Organizing," September 6, 2000. A study of Chicago-area NLRB representation elections by University of Illinois-Chicago professors Chirag Mehta and Nik Theodore reported similar findings. Mehta and Theodore found that workers were fired illegally during 30 percent of organizing campaigns, employers force workers to attend one-on-one, anti-union meetings with supervisors during 91 percent of NLRB representation election campaigns, and employers hire consultants or union-busters to help them fight 82 percent of union organizing drives. See Mehta and Theodore, "Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns," report for American Rights at Work, December 2005.

2. John Schmitt and Ben Zipperer, "Dropping the Ax: Illegal Firings During Union Election Campaigns," Center for Economic and Policy Research, January 2007, [http://www.cepr.net/index.php?option=com\\_content&task=view&id=775&Itemid=8](http://www.cepr.net/index.php?option=com_content&task=view&id=775&Itemid=8).

9. National Labor Relations Board annual report, fiscal year 2007, Table 4.

10. John-Paul Ferguson, "The Eyes of the Needles: A Sequential Model of Union Organizing Drives, 1999-2004," *Industrial and Labor Relations Review*, October 2008.

11-12: Peter D. Hart Research Associates, survey for the AFL-CIO, December 2008.

13. U.S. Department of Labor, Bureau of Labor Statistics.

# THE UNION DIFFERENCE

## Union Advantage by the Numbers

**Union workers get more benefits and earn higher wages than workers who don't have a voice on the job with a union.**

Union workers participating in job-provided health insurance	79%
Nonunion workers participating in job-provided health insurance	52%

**Union workers are 52 percent more likely than nonunion workers to have job-provided health care**

Union workers without health insurance coverage	2.5%
Nonunion workers without health insurance coverage	15%

**Nonunion workers are five times more likely to lack health insurance coverage**

Union workers participating in guaranteed (defined-benefit) pension plans	77%
Nonunion workers participating in guaranteed (defined-benefit) pension plans	20%

**Union workers are 285 percent (nearly three times) more likely than nonunion workers to have defined-benefit pensions**

Union workers with paid personal leave	57%
Nonunion workers with paid personal leave	38%

**Union workers are 50 percent more likely than nonunion workers to have paid personal leave**

Union workers' average days of paid vacation	15 days
Nonunion workers' average days of paid vacation	11.75 days
<b>Union paid vacation advantage</b>	<b>28%</b>

Union workers' median weekly earnings	\$886
Nonunion workers' median weekly earnings	\$691
<b>Union wage advantage</b>	<b>28%</b>

Union women's median weekly earnings	\$809
Nonunion women's median weekly earnings	\$615
<b>Union wage advantage for women</b>	<b>32%</b>

African American union workers' median weekly earnings	\$720
African American nonunion workers' median weekly earnings	\$564
<b>Union wage advantage for African Americans</b>	<b>28%</b>

Latino union workers' median weekly earnings	\$733
Latino nonunion workers' median weekly earnings	\$512
<b>Union wage advantage for Latinos</b>	<b>43%</b>

Asian American union workers' median weekly earnings	\$902
Asian American nonunion workers' median weekly earnings	\$852
<b>Union wage advantage for Asian Americans</b>	<b>6%</b>

Sources: U.S. Department of Labor, Bureau of Labor Statistics, *Union Members in 2008*, Jan. 28, 2009; U.S. Department of Labor, Bureau of Labor Statistics, *National Compensation Survey: Employee Benefits in Private Industry in the United States*, March 2008, August 2008; Economic Policy Institute; Employee Benefits Research Institute, May 2005.



## **Free Choice and Small Business**

By Sen. John F. Kerry  
The Herald News  
February 7, 2009

Americans today are working harder than ever, and too often finding that the secure and stable middle-class life their parents counted on is falling further and further out of reach for them and their children.

Story after story remind us just how much in the past working Americans have fallen behind in the past eight years. For those who have struggled during this difficult period, it comes as no surprise that median household income in 2007 was \$1,175 less than it was in 2000, while basic family expenses rose \$4,600 in that same period. These families don't need to be lectured with statistics — they feel the middle-class squeeze every day in their paychecks and checkbooks.

Now — with a new president and a new, strong progressive majority in Congress — these workers are hoping that Washington will at last be an incubator of good policies that create opportunity, reward work not just wealth, and help restore the middle class. That's why it's so important that the 111th Congress pass the Employee Free Choice Act.

We know that one of the lessons of the Greatest Generation remains that when workers can join a union, the middle class is strengthened. The gains workers made in the last century would never have been possible had union organizers not marched and pushed and gone door to door, shop to shop, to stand up for their fellow workers.

Workers in unions earn 30 percent higher wages on average, and are 60 percent more likely to have employer-covered health insurance. The question is what we will do to empower workers in this new century — and it should begin with The Employee Free Choice Act's common sense, fundamentally fair mission of making it easier for men and women to join a union in their workplace. The legislation would give workers a fair and direct path to form unions through majority sign-up, help employees secure a contract with their employer in a reasonable period of time and toughen penalties against employers who break the law.

Powerful, entrenched opponents of the legislation have made a variety of false statements, arguing that the bill will take away workers' right to a secret ballot election, expose workers to intimidation and harassment or hurt the economy. These arguments are untrue and especially dubious because they have no reliable data to back them up. Too often, these objections come from the same people and groups that have enriched and protected Wall Street over Main Street — among them those who opposed ideas like minimum wage increases and family medical leave, which history has proven are mainstream, commonsense policies. Still, let's not let this debate spiral downward into name-calling. Consider the source, but also consider the facts.

Honest and well-meaning people can differ, and many small business owners in particular have asked me how this legislation would affect their businesses. I don't think they have much to worry about, for three key reasons.

First, in the decades when our labor laws protected workers' free choice to join unions, small businesses thrived and America built the strongest middle class in the world. The evidence shows that our nation's economy and overall productivity grew when American workers had an ability to share in the prosperity of our country and their companies.

Second, the Employee Free Choice Act makes no changes to the small business exemptions under our nation's labor laws. Small businesses employing an estimated four million American workers would still be exempt and completely unaffected.

Third, the economic benefits of unions to all businesses, large and small, are well-established. Unions help reduce costs associated with turnover because they give employees a voice in the workplace to speak up for changes, rather than simply quitting or being fired. Employment security fuels collaboration and information sharing, leading to higher productivity.

The research also shows that union firms are just as productive and successful as non-union firms. A U.S. Small Business Administration report, for example, indicated that small business bankruptcy rates are lower in states with high unionization rates than they are in states where fewer workers have a voice.

In an ironic twist, the actual threat to small businesses may come from the groups fighting the Employee Free Choice Act most vigorously — the big corporations whose very business strategies have consistently hurt small businesses across the country by squeezing small businesses out of the marketplace.

I believe that by helping put more money in working people's pockets, the Employee Free Choice Act will strengthen our economy for everyone, including workers and customers of America's small businesses.

Americans spoke powerfully on Election Day, demanding that Washington find bipartisan solutions to our economic problems. On Main Street, we need to do the same with policies that restore opportunity in our country and work for everyone. Passing the Employee Free Choice Act would be a big downpayment on that fairness agenda.

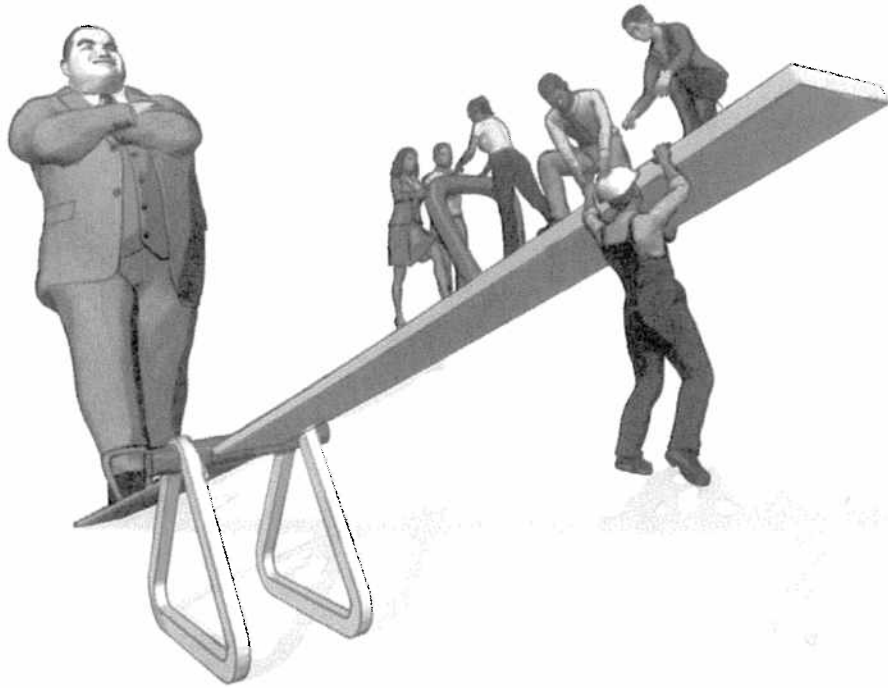
*John F. Kerry is the junior senator from Massachusetts and former chairman of the Senate Small Business Committee.*

AN IMPORTANT MESSAGE FROM YOUR UNION

## **Corporations Hold All the Power**

Corporate greed has led us into the worst economic crisis since the Great Depression. But our economy won't recover until we are able to restore the balance of power in the workplace.

Right now, corporations routinely harass, intimidate, coerce and fire workers just because they want the freedom to bargain for a better life—and even if companies get caught, all they get is a slap on the wrist.



## **RESTORE THE BALANCE**

**And Turn Our Economy Around with the Employee Free Choice Act**

The Employee Free Choice Act will:

- Restore workers' freedom to make their own decision about how to join together to bargain for better benefits and fair wages.
- Create real penalties for companies that violate workers' rights.
- Provide mediation and arbitration to help workers and employers come to agreement on a first contract.

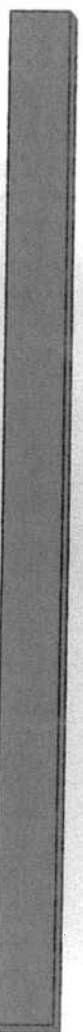
**Don't let the senators you elected side with the CEOs whose reign of greed wrecked our economy.**

**For more information, visit:  
[www.EmployeeFreeChoiceAct.org](http://www.EmployeeFreeChoiceAct.org)**

# Many Employer Tactics Unacceptable

■ Unacceptable for employers to do

Fire employees who support the union



94%

Supervisors urge individual employees to vote against union



82%

Warn that pay/benefits would be reduced if employees vote "yes"



81%

Warn that vote for union could lead to company closing/layoffs



66%

Send letters to employees' homes urging vote against union



62%

Require attendance at anti-union meetings during work hours



61%

**TURN  
AROUND  
AMERICA**



110TH CONGRESS  
1ST SESSION

# H. R. 800

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## AN ACT

To amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Employee Free Choice  
3 Act of 2007”.

4 **SEC. 2. STREAMLINING UNION CERTIFICATION.**

5       (a) **IN GENERAL.**—Section 9(c) of the National  
6 Labor Relations Act (29 U.S.C. 159(c)) is amended by  
7 adding at the end the following:

8       “(6) Notwithstanding any other provision of this sec-  
9 tion, whenever a petition shall have been filed by an em-  
10 ployee or group of employees or any individual or labor  
11 organization acting in their behalf alleging that a majority  
12 of employees in a unit appropriate for the purposes of col-  
13 lective bargaining wish to be represented by an individual  
14 or labor organization for such purposes, the Board shall  
15 investigate the petition. If the Board finds that a majority  
16 of the employees in a unit appropriate for bargaining has  
17 signed valid authorizations designating the individual or  
18 labor organization specified in the petition as their bar-  
19 gaining representative and that no other individual or  
20 labor organization is currently certified or recognized as  
21 the exclusive representative of any of the employees in the  
22 unit, the Board shall not direct an election but shall certify  
23 the individual or labor organization as the representative  
24 described in subsection (a).

25       “(7) The Board shall develop guidelines and proce-  
26 dures for the designation by employees of a bargaining



1 representative in the manner described in paragraph (6).

2 Such guidelines and procedures shall include—

3 “(A) model collective bargaining authorization  
4 language that may be used for purposes of making  
5 the designations described in paragraph (6); and

6 “(B) procedures to be used by the Board to es-  
7 tablish the validity of signed authorizations desig-  
8 nating bargaining representatives.”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) NATIONAL LABOR RELATIONS BOARD.—Sec-  
11 tion 3(b) of the National Labor Relations Act (29  
12 U.S.C. 153(b)) is amended, in the second sentence—

13 (A) by striking “and to” and inserting  
14 “to”; and

15 (B) by striking “and certify the results  
16 thereof,” and inserting “, and to issue certifi-  
17 cations as provided for in that section,”.

18 (2) UNFAIR LABOR PRACTICES.—Section 8(b)  
19 of the National Labor Relations Act (29 U.S.C.  
20 158(b)) is amended—

21 (A) in paragraph (7)(B) by striking “, or”  
22 and inserting “or a petition has been filed  
23 under section 9(c)(6), or”; and

24 (B) in paragraph (7)(C) by striking “when  
25 such a petition has been filed” and inserting

1 “when such a petition other than a petition  
2 under section 9(c)(6) has been filed”.

3 **SEC. 3. FACILITATING INITIAL COLLECTIVE BARGAINING**  
4 **AGREEMENTS.**

5 Section 8 of the National Labor Relations Act (29  
6 U.S.C. 158) is amended by adding at the end the fol-  
7 lowing:

8 “(h) Whenever collective bargaining is for the pur-  
9 pose of establishing an initial agreement following certifi-  
10 cation or recognition, the provisions of subsection (d) shall  
11 be modified as follows:

12 “(1) Not later than 10 days after receiving a  
13 written request for collective bargaining from an in-  
14 dividual or labor organization that has been newly  
15 organized or certified as a representative as defined  
16 in section 9(a), or within such further period as the  
17 parties agree upon, the parties shall meet and com-  
18 mence to bargain collectively and shall make every  
19 reasonable effort to conclude and sign a collective  
20 bargaining agreement.

21 “(2) If after the expiration of the 90-day period  
22 beginning on the date on which bargaining is com-  
23 menced, or such additional period as the parties may  
24 agree upon, the parties have failed to reach an  
25 agreement, either party may notify the Federal Me-

1 diation and Conciliation Service of the existence of  
 2 a dispute and request mediation. Whenever such a  
 3 request is received, it shall be the duty of the Service  
 4 promptly to put itself in communication with the  
 5 parties and to use its best efforts, by mediation and  
 6 conciliation, to bring them to agreement.

7 “(3) If after the expiration of the 30-day period  
 8 beginning on the date on which the request for me-  
 9 diation is made under paragraph (2), or such addi-  
 10 tional period as the parties may agree upon, the  
 11 Service is not able to bring the parties to agreement  
 12 by conciliation, the Service shall refer the dispute to  
 13 an arbitration board established in accordance with  
 14 such regulations as may be prescribed by the Serv-  
 15 ice. The arbitration panel shall render a decision set-  
 16 tling the dispute and such decision shall be binding  
 17 upon the parties for a period of 2 years, unless  
 18 amended during such period by written consent of  
 19 the parties.”.

20 **SEC. 4. STRENGTHENING ENFORCEMENT.**

21 (a) INJUNCTIONS AGAINST UNFAIR LABOR PRACTICES DURING ORGANIZING DRIVES.—

23 (1) IN GENERAL.—Section 10(l) of the National  
 24 Labor Relations Act (29 U.S.C. 160(l)) is amend-  
 25 ed—

1 (A) in the second sentence, by striking “If,  
2 after such” and inserting the following:

3 “(2) If, after such”; and

4 (B) by striking the first sentence and in-  
5 serting the following:

6 “(1) Whenever it is charged—

7 “(A) that any employer—

8 “(i) discharged or otherwise discriminated  
9 against an employee in violation of subsection  
10 (a)(3) of section 8;

11 “(ii) threatened to discharge or to other-  
12 wise discriminate against an employee in viola-  
13 tion of subsection (a)(1) of section 8; or

14 “(iii) engaged in any other unfair labor  
15 practice within the meaning of subsection (a)(1)  
16 that significantly interferes with, restrains, or  
17 coerces employees in the exercise of the rights  
18 guaranteed in section 7;

19 while employees of that employer were seeking rep-  
20 resentation by a labor organization or during the pe-  
21 riod after a labor organization was recognized as a  
22 representative defined in section 9(a) until the first  
23 collective bargaining contract is entered into between  
24 the employer and the representative; or

1           “(B) that any person has engaged in an unfair  
2       labor practice within the meaning of subparagraph  
3       (A), (B) or (C) of section 8(b)(4), section 8(e), or  
4       section 8(b)(7);

5       the preliminary investigation of such charge shall be made  
6       forthwith and given priority over all other cases except  
7       cases of like character in the office where it is filed or  
8       to which it is referred.”.

9           (2) CONFORMING AMENDMENT.—Section 10(m)  
10       of the National Labor Relations Act (29 U.S.C.  
11       160(m)) is amended by inserting “under cir-  
12       cumstances not subject to section 10(l)” after “sec-  
13       tion 8”.

14       (b) REMEDIES FOR VIOLATIONS.—

15           (1) BACKPAY.—Section 10(c) of the National  
16       Labor Relations Act (29 U.S.C. 160(c)) is amended  
17       by striking “*And provided further,*” and inserting  
18       “*Provided further,* That if the Board finds that an  
19       employer has discriminated against an employee in  
20       violation of subsection (a)(3) of section 8 while em-  
21       ployees of the employer were seeking representation  
22       by a labor organization, or during the period after  
23       a labor organization was recognized as a representa-  
24       tive defined in subsection (a) of section 9 until the  
25       first collective bargaining contract was entered into

1       between the employer and the representative, the  
2       Board in such order shall award the employee back  
3       pay and, in addition, 2 times that amount as liq-  
4       uidated damages: *Provided further,*”.

5               (2) CIVIL PENALTIES.—Section 12 of the Na-  
6       tional Labor Relations Act (29 U.S.C. 162) is  
7       amended—

8               (A) by striking “Any” and inserting “(a)  
9       Any”; and

10              (B) by adding at the end the following:

11       “(b) Any employer who willfully or repeatedly com-  
12       mits any unfair labor practice within the meaning of sub-  
13       sections (a)(1) or (a)(3) of section 8 while employees of  
14       the employer are seeking representation by a labor organi-  
15       zation or during the period after a labor organization has  
16       been recognized as a representative defined in subsection  
17       (a) of section 9 until the first collective bargaining con-  
18       tract is entered into between the employer and the rep-  
19       resentative shall, in addition to any make-whole remedy  
20       ordered, be subject to a civil penalty of not to exceed  
21       \$20,000 for each violation. In determining the amount of  
22       any penalty under this section, the Board shall consider  
23       the gravity of the unfair labor practice and the impact  
24       of the unfair labor practice on the charging party, on other

1 persons seeking to exercise rights guaranteed by this Act,  
2 or on the public interest.”.

Passed the House of Representatives March 1,  
2007.

Attest:

*Clerk.*

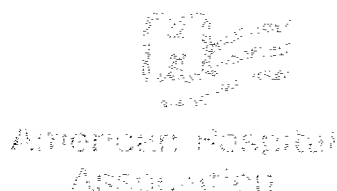
110TH CONGRESS  
1ST SESSION

# H. R. 800

## AN ACT

To amend the National Labor Relations Act to establish an efficient system to enable employees to form, join, or assist labor organizations, to provide for mandatory injunctions for unfair labor practices during organizing efforts, and for other purposes.





February 25, 2009

The Honorable Jim DeMint  
United States Senate  
340 Senate Russell Office Building  
Washington, DC 20505

Dear Senator DeMint:

On behalf of the American Hospital Association (AHA) and our nearly 5,000 hospital and health care system members and 37,000 individual members, and the American Society for Healthcare Human Resources Administration (ASHHRA), an AHA personal membership group of health care human resources professionals, we are pleased to write in support of your legislation, *The Secret Ballot Protection Act*.

America's hospitals believe in the right of individuals to collectively organize for purposes of union representation, but we believe that those elections must be fair and impartial. The Secret Ballot Protection Act will ensure that workers in an appropriate collective bargaining unit are able to cast their votes on unionization in private, free from undue pressure or influence.

The National Labor Relations Act sets forth a process to ensure that union elections are fair, free of fraud, and confidential. "Card checks" force employees to declare their preference on a unionization vote in front of union organizers. Such a process invites coercion, intimidation and abuse. The National Labor Relations Board and the courts have acknowledged that the secret ballot is the "most satisfactory ... indeed the preferred .... method of determining whether a union has majority support." We believe that the legislation you have introduced will go a long way toward ensuring that the true interests of hospital employees and their wish to be represented – or not – by a labor union are upheld.

We look forward to working with you on this important legislation. Please feel free to contact us or AHA Senior Associate Director of Federal Relations Carla Luggiero at 202-626-2333 should you have any questions.

Sincerely,

Rick Pollack  
Executive Vice President  
American Hospital Association

Catherine D. Sewell  
Executive Director  
American Society for Healthcare  
Human Resources Administration



**SERVICE  
EMPLOYEES  
INTERNATIONAL  
UNION  
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March 3, 2009

I would like to thank Chairman Lindberg and the rest of the Labor Committee for allowing me this opportunity to testify on House Resolution 10. I would also like to thank Representative Miller for his efforts on this issue over the last couple of years. This resolution sends a strong message in support of the Employee Free Choice Act (EFCA), which is vital to preserving our country's middle class. My name is Cynthia Ann Paul and I am the legislative Director for the Service Employees International Union (SEIU) here in the state of Michigan. Today, I am testifying on behalf of our 80,000 members here in Michigan as well as our 2-million members across the United States, as well as the thousands of unorganized workers who would like the opportunity to have a voice in the workplace and negotiate their wages and benefits.

SEIU supports House Resolution 10, which memorializes the United States Congress to enact the EFCA. SEIU believes that the EFCA are much needed changes to the National Labor Relations Act to truly give workers a fair and free chance to form a union in their workplaces. It also holds anti-union employers accountable and prevents employers from stalling and dragging out contract negotiations. The Central purpose of the EFCA is to create an atmosphere where workers can truly choose a union free from employer coercion by allowing representation when a majority of workers sign authorization cards. It also allows for first contract mediation and arbitration, and enhances penalties for employers that do coerce and interfere with employees trying to organize and/or get a first contract.

Over the last couple of decades union elections are often the focus of employer intimidation and coercion. Employers illegally fire employees for their union activity in at least 25% of all organizing efforts and 70% of employers in the manufacturing sector threaten to relocate their facilities. Every year nearly 23,000 workers are discriminated against, losing wages and even their jobs for exercising their freedom to associate, supposedly guaranteed under our first amendment. The EFCA attempts to remedy this grave injustice by allowing for certification of a union as the bargaining representative if the National Labor Relations Board (NLRB) finds that a majority of employees in an appropriate bargaining unit have signed authorization cards. It does not get rid of the representation election, if employees so choose to utilize that method to determine representation. It further



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requires the NLRB to develop model authorization language and procedures for establishing the validity of signed authorizations

Even after unions organize workplaces many times they are faced with uncooperative employers who drag their feet and/or refuse to negotiate all together. In fact, 50% of workers who choose to unionize still do not have a contract within two years after choosing a union. In an attempt to remedy this problem, the EFCA provides that if the parties do not reach a contract within 90 days, either party can seek mediation from the Federal Mediation and Conciliation Service (FMCS). If there is no agreement after 30-days of mediation, the dispute may go to arbitration, the result of which will bind the parties for two years.

The EFCA additionally provides much needed employee protection by enhancing the penalties for employer coercion and interference when employees are trying to organize or get a first contract. Employers fire pro-union workers in 25% of all organizing drives. But the remedies for this coercion are inadequate. Many times employees must spend years to prove his or her case only to be eligible to receive back pay and reinstatement. To remedy this, the EFCA provides the following: it allows the NLRB to go to court in order to get an injunction (an order stopping) an employer from firing or discriminating against workers based upon their union activity during an organizing drive or first contract drive and allows for treble back pay damages. It also provides for \$20,000 civil fine for employers who willfully or repeatedly violate workers' rights during an organizing campaign or first contract drive.

The EFCA will once again give workers a voice at the workplace and takes important steps towards strengthening America's middle class. That is why a majority of Americans support it, and that is why today I urge you and all of your colleagues to do the same. Once again, thank you for allowing me this opportunity to testify.

Respectfully Submitted,

Cynthia Ann Paul, JD, SEIU MI State Council Legislative Director  
115 W. Allegan, Suite 400  
Lansing, MI 48933  
(517) 482-4886, ext # 12



**The Voice of Small Business**

Amanda Radaz, Assistant State Director  
National Federation of Independent Business  
115 W. Allegan / Suite 310  
Lansing, MI 48933  
(517) 485-3409

Testimony on House Resolution 10 – Card Check Legislation

House Labor Committee  
March 4, 2009

My name is Amanda Radaz and I am the Assistant State Director for NFIB Michigan. NFIB has been a legislative advocate for small business here in Michigan and across the country for over 65 years.

I am here to express our opposition to House Resolution 10 which would memorialize Congress to support and pass the so called Employee Free Choice Act (EFCA) otherwise know as Card Check legislation.

This legislation would take away a worker's right to a private ballot vote on whether they want to be represented by a labor union. It seeks to replace private-ballot union elections with the inferior card-check system, which allows a union to organize simply if a majority of workers sign a card. Organizing by card check radically initiates the unionization of small businesses from the outside, not internally by employees themselves, and would keep small-business owners uninformed about organizing drives.

Card checks can be conducted so quickly that small employers rarely have a chance to address employees during an organizing campaign, resulting in a one-sided discussion solely between a union representative and an employee.

The EFCA would remove an employee's right to a private ballot election, denying employees their fundamental right to a private vote. This leaves them vulnerable to harassment, misinformation and union pressure. It also allows an employer to know the vote of an employee.

Card check would also force compulsory, binding arbitration on a small-business employer if the business owner does not recognize the contract offered by a union. If no contract is agreed to within 120 days, a government arbiter will interject and set the terms of the contract.

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Small-business owners will have no real voice in determining work terms or pay for their employees. Instead, a government bureaucrat will come into a small business and dictate wages and benefits, regardless of an employer's ability to pay.

Employees would also be left out of the process. They will not be provided with the opportunity to vote on their new contract. Without regard, those employees could be forced into unacceptable terms of work or pay with their small business employer.

Small businesses are less likely to have labor counsel and are more susceptible to the complicated legal restrictions employers face during organizing drives. Card Check legislation unjustly increases financial damages up to \$20,000 on small business employers who may unknowingly violate the National Labor Relations Act (NLRA). On the contrary, no increased financial damages are levied against unions or union representatives for violating NLRA.

In a poll conducted by McLaughlin & Associates early this year, 74% of UNION households oppose this legislation. That is because, this isn't about whether unions are good or bad, this is about a fundamental right for workers to have a private ballot election.

We would encourage this committee to pass legislation that will encourage small businesses to grow and create jobs, not political paybacks that prop up labor leaders by stripping the rights of workers and shoving unionization down the throat of Mainstreet.

Thank you for the time to speak on this important issue. At this time, I'd like to introduce one of our members, Jim Swain, owner of Courtesy Car and Truck from Tekonsha, MI.



**House Labor Committee  
March 4, 2009  
Testimony of Chris Fisher  
Associated Builders and Contractors of Michigan**

Good afternoon Chairman Lindberg and members of the committee. Thank you for the opportunity to be here today. My name is Chris Fisher and I am with Associated Builders and Contractors of Michigan. I appear before this committee in strong opposition to this resolution.

The right of the American worker to freely and voluntarily join with their co-workers by voting in private in deciding to join or not to join a labor union--free of coercion or intimidation--is a fundamental right that should never be infringed upon.

Unfortunately, this resolution is a blatant infringement upon this fundamental American right because it will undemocratically rob workers of their right to cast such a vote in private.

I realize that proponents of HR 10 seek to justify the perceived need for this resolution by inserting views in support of organized labor and a belief that unionization, generally speaking, is good.

However, that is not at all what this is about. I appear here today not to weigh in on whether or not the union movement is good or bad. Frankly, this is in no way relevant to our opposition to this resolution.

At the end of the day what this is really about, and what I implore each member of this committee to thoughtfully consider, is whether or not the right of working men and women to vote their conscience in private ought to be infringed upon. This question is what brings us together today. The fact that we are debating such a question ought to give pause to each of us in this committee room. Frankly, it is astonishing.

As elected officials you were all elected via a secret ballot election. Indeed, this is a cornerstone of American Democracy and one which should never be infringed upon—least of which by a democratically elected body.

Yet, in the coming months the US Congress will be considering legislation that would actually replace private ballot elections—the preferred and statutorily provided method for determining whether employees want a union to represent them—with a “card check” system.

Under the card check process, employees are forced to indicate their choice of whether to join a union by having to sign a card in public and in front of their co-workers, employers and union organizers.

The very fact that they must sign this card out in the open deprives workers of the freedom and protection afforded them in a private ballot election by infringing upon their fundamental right to make a free, private decision without of even the possibility of coercion and abuse by onlookers observing which way a person votes.

It is a dangerous a step in the wrong direction to trample upon this basic right of working men and women. This resolution is absolutely at odds with the bedrock principle of the democratic process: the right to freely vote your conscience.

The current system of determining union representation is overseen by the National Labor Relations Act. This act allows employees to determine whether or not they choose to be represented by a union through secret ballot elections held by the impartial National Labor Relations Board (NLRB). To ensure a fair election, free of employer and union coercion, the NLRB follows strict procedures that guarantee a fair election, free of fraud, where employees may cast their vote confidentially and freely. Under current law governing these elections, an NLRB agent is present and oversees the entire voting process and ensures that neither the employer nor the union can determine or interfere with how an individual employee votes.

This is the way it should continue to be. Forcing employees to cast their vote in front of their employers, union organizers, and their and fellow employees is a recipe for massive coercion, intimidation and reprisal.

I should not have to urge any of you to oppose this resolution. I am nonetheless compelled to do so. So I ask you to protect the right of employees to vote in private election to ensure the democratic principles that our state and country have long championed and defended. I urge you to oppose this resolution.

I would like to thank you Mr. Chairman and members of the Committee for the privilege to be here today. I would be happy to take any questions you or your fellow committee members may have.